# In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1335

JAMES BUTTS AND JOHN S. GIANAKOS, PETITIONERS

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT*

**MEMORANDUM FOR THE UNITED STATES IN OPPOSITION**

After a joint trial by jury in the United States District Court for the Southern District of New York, petitioners were convicted of conspiring to violate 18 U.S.C. 659 by attempting to dispose of a valuable oil painting stolen from the Pan American Terminal in the John F. Kennedy Airport in New York. (Pet. 3). Each petitioner was sentenced to two years imprisonment, sentence suspended except for two months to be served and twenty months probation. The court of appeals affirmed without opinion on January 5, 1971 (Pet. App. 2, Ex. B). The petition for a writ of certiorari, filed on February 10, is out of time under Rule 22(2).



418-995—71

Petitioners do not challenge the sufficiency of the evidence to support their convictions. In brief, the evidence showed that the painting was stolen by employees of Pan American who then endeavored to find a buyer. Petitioner Butts, who lived in Baltimore, was one of those approached. He acted as a "finder" in an attempt to dispose of the stolen painting. Petitioner John S. Gianakos handled the negotiations between the various parties in the attempt to sell the painting. One of the persons approached notified the F.B.I., after which an F.B.I. agent posed as a buyer. The negotiations with the "buyer", the recovery of the painting and the arrest of most of the conspirators took place in New York.

1. Both petitioners argue that they could not have a fair trial in the Southern District of New York because of pre-trial publicity generated by a speech made by the Attorney General some two months prior to trial to the effect that organized crime was infiltrating legitimate business, including airport trucking and air line terminal operations at a rather large airport (Pet. App. 4–8). The newspaper articles submitted by petitioner either criticized the Attorney General's speech or denied the existence of the mass criminality referred to in the speech (Pet. App. 9–12). At trial petitioners also referred to an article and cartoon urging that the New Jersey legislature expand the powers of the Waterfront Commission (Pet. App. 13). We submit that none of this generalized discussion was likely to deprive petitioners of the right to a fair trial.

2. Petitioner Butts claims (Pet. 9) that his motion for a severance should have been granted, presumably because he lived in Baltimore and did not know all the co-defendants. Butts' claim that his defense was prejudiced by his joinder with the other defendants is unsupported by facts. Since he entered into a venture which he knew to be illegal, he was properly tried with his co-conspirators, whether or not he knew the identity of each. *Blumenthal* v. *United States*, 332 U.S. 539, 557–558.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
*Solicitor General.*

MARCH 1971.

U.S. GOVERNMENT PRINTING OFFICE : 1971